



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



C1

File: EAC-99-224-51660 Office: Vermont Service Center

Date: NOV 29 2000

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying code added to
prevent clearly unauthorized
invasion of personal privacy

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. A Form G-28, Notice of Entry of Appearance as Attorney or Representative, was submitted by counsel; however, it was submitted in behalf of the beneficiary. As such, this decision will be furnished only to the petitioner.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as an evangelist. The director denied the petition determining that the petitioner had failed to establish that the prospective occupation is a religious occupation.

On appeal, the petitioner submits photocopies of previously-submitted documents.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary is a forty-four-year-old married female native and citizen of Korea. The petitioner indicated that the beneficiary entered the United States as a nonimmigrant religious worker on May 12, 1998 and that her authorized period of admission will expire on August 31, 2001. The petitioner submitted evidence (a photocopy of the visa the beneficiary was issued, as well as a photocopy of the beneficiary's Form I-94, Arrival-Departure Report) which indicated that the beneficiary entered the United States as a B-2 visitor for pleasure on May 12, 1998 and that her authorized period of admission expired on November 11, 1998. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

At issue in the director's decision is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a letter dated July 12, 1999, the petitioner stated that:

[The beneficiary] graduated from the Christian Gospel Theological Seminary of Korea General Assembly of Presbyterian Church upon completing a four year course in Theology. After her arrival in the United States, [the beneficiary] enrolled in a missionary course at our church and completed her studies on March 30, 1998 . . . [The beneficiary] will be primarily a teacher with the overall responsibility of planning the educational program for the elementary, middle students and college students of our church. She will also organize the Bible instruction program as well as the educational program for Evangelists of our Church. Additionally, [she] will counsel the adolescent, young-adult, and female members with personal, cultural, educational and family difficulties.

On March 20, 2000, and again on June 19, 2000, the director requested that the petitioner submit additional information. In response, the petitioner submitted a photocopy of its By-laws which indicated that an evangelist "who is graduated from the theological seminary or the college should complete the course of evangelist program which will be held at INTERNATIONAL MISSION CHURCH, INC." The petitioner also submitted a "certificate of graduate" from the Korea General Assemblé of Presbyterian Church Theological Seminary, dated February 10, 1983, which indicated that the beneficiary "completed four year course in theology at our Seminary." The petitioner stated that the beneficiary "will provide excellent bible classes and spread the Word of God to various population in attempt to guide and lead them to religious life at her best."

On appeal, the petitioner submits photocopies of previously-submitted documents. The evidence submitted in support of this petition does not establish that the prospective occupation is a religious occupation. The petitioner has submitted evidence that the beneficiary received a diploma from a seminary; however, the petitioner has not documented how this education qualifies the beneficiary for the prospective occupation. Based on the duties of an evangelist, as provided by the petitioner, it appears that anyone with any knowledge of the Bible would be capable of working

as an evangelist. There is no evidence that a formal theological education is a prerequisite for this position. Accordingly, the petitioner has not met the requirements at 8 C.F.R. 204.5(m)(2).

Beyond the decision of the director, the petitioner has failed to establish the beneficiary's two years of continuous religious work experience as required at 8 C.F.R. 204.5(m)(1). As the appeal will be dismissed on the ground discussed, this issue need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.